

REMARKS

____ Favorable reconsideration is respectfully requested in view of the foregoing amendments and the following remarks.

I. CLAIM STATUS AND AMENDMENTS

Claims 1-19 were pending in this application when last examined.

Claims 12-19 have been withdrawn as non-elected subject matter.

Claims 1-11 were examined and are rejected.

The specification has been amended to comply with the requirements of 37 C.F.R. §§ 1.821-1.825. The Sequence ID Numbers correspond to the SEQUENCE LISTING submitted on July 08, 2008.

No new matter has been added.

II. CLAIM FOR PRIORITY

Applicants have attached herewith an English translation of the Japanese Patent Application No. 431007/2003 to which this application claims priority. Included with the translation is a certification by the translator, Mr. Shigeaki Yamazaki. Applicants assert that the submission of the attached translation perfects the claim for foreign priority.

Applicants respectfully request that the Examiner acknowledge receipt of all copies of the priority documents.

III. SEQUENCE REQUIREMENTS

Applicants assert that the current amendment to the specification satisfies the sequence requirements of 37 C.F.R. §§ 1.821-1.825.

IV. REJECTIONS UNDER 102(a) AND 102(e)

Claims 1 and 3-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Tsuchiya et al. (BBRC, 2005, 326:777-781). See item 7 on page 4.

Applicants note that the Tsuchiya et al. reference is properly cited under 102(a) and make the following arguments based on the assumption that the Examiner intended to reject claims 1 and 3-8 under 35 U.S.C. 102(a).

Further, claims 1, 3, 4, 6, 8 and 9 are rejected under 35 U.S.C. 102(a) as being anticipated by Ochiai et al. (Biol. Pharm. Bull., 2005, 28/10:2019-2022). See item 8 on page 5.

Finally, claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Karras (7,307,369, filing date 02/06/04). See item 10 on pages 6 and 7

Applicants note that the submission of the attached English translation of the certified priority document perfects the priority date to December 25, 2003, which antedates all 102(a) and 102(e) references cited in the Office Action. In view of the priority date, this rejection is overcome.

V. REJECTIONS UNDER 102(b)

Claims 1, 10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Brunner et al. (J. Immunology, 2000, 165:6278-6286). See item 9 on pages 5 and 6.

Specifically, the Examiner takes the position that Brunner et al. discloses CpG containing oligonucleotides. Further, the Examiner contends that Brunner et al. discloses that these oligonucleotides induce cytokine production. Finally, the Examiner argues that Brunner et al. discloses in vitro methods of producing inflammatory cytokines.

Applicants respectfully traverse this rejection.

Contrary to the Examiner's position, the CpG containing oligonucleotides of Brunner et al. do not anticipate the present invention. Specifically, the Applicants assert that the CpG sequence of the Brunner et al. invention consists of nucleic acids, which exist naturally in

bacterial DNA. Particularly, the nucleic acid bases in the CpG of Brunner et al. are naturally existing bases in bacterial DNA. In contrast, the claimed invention contains special nucleic acid bases as an ingredient of the nucleic acid. Such special nucleic acid bases are not naturally occurring bacterial DNA. Specifically, it is a base except adenine, guanine, cytosine, thymine, and uracil, such as a microbial nucleic acid-specific modified base. See page 10, lines 18-30 of the specification as filed.

Further support for Applicants' arguments can be found in claim 6, which claims a immunopotentiator comprising:

- (a) a nucleic acid containing a special nucleic acid base (by incorporating the limitations of claim 1); and
- (b) a nucleic acid containing CpG sequence.

Therefore, it is clear that the special base containing nucleic acid of claim 1 is distinct from the nucleic acid containing a CpG sequence as further limited by claim 6.

Applicants assert that Brunner et al. neither teaches nor suggests the limitation of special nucleic acid bases of the claimed invention. Absent such a teaching or suggestion to use a special base, a person having ordinary skill in the art would not be motivated to achieve the present invention with a reasonable expectation of success based on the teachings of Brunner et al.

Therefore, this rejection is untenable and should be withdrawn.

CONCLUSION

In view of the foregoing amendments and remarks, the present application is in condition for allowance and early notice to that effect is hereby requested.

If the Examiner has any comments or proposals for expediting prosecution, please contact the undersigned attorney at the telephone number below.

The Commissioner is authorized to charge any deficiency or to credit any overpayment associated with this communication to Deposit Account No. 23-0975, with the EXCEPTION of deficiencies in fees for multiple dependent claims in new applications.

Respectfully submitted,

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/William R.
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Attachments: English Translation with certification for Japanese Patent Application
No. 431007/2003.

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